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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

JAMES M. KINDER,
Plaintiff,

vs.

HARRAH'S ENTERTAINMENT, INC. and
DOES 1 through 100, inclusive,
Defendants.

CASE NO. 07-CV-2132-DMS (AJB)
[Consolidated with 07 CV 2226 DMS (POR)]

Judge: Hon. Dana M. Sabraw
Mag. Judge: Hon. Anthony J. Battaglia

Action Date: October 2, 2007

DEFENDANT HARRAH'S
ENTERTAINMENT, INC.'S
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF MOTION
TO DECLARE PLAINTIFF A VEXATIOUS
LITIGANT AND FOR AN ORDER
REQUIRING PLAINTIFF TO POST A
BOND IN THE AMOUNT OF \$75,000

ACCOMPANYING DOCUMENTS:
NOTICE OF MOTION AND MOTION;
DECLARATION OF RONALD R. GIUSSO;
NOTICE OF LODGMENT OF EXHIBITS;
[PROPOSED] ORDER

Date: April 18, 2008
Time: 1:30 p.m.
Courtroom: 10

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I.

INTRODUCTION

On October 2, 2007, Plaintiff James M. Kinder ("KINDER") filed a complaint against Defendant Harrah's Entertainment, Inc. in San Diego County Superior Court alleging violations of the Telephone Consumer Protection Act, California *Civil Code* section 1770, Unfair Business Practices Act, and trespass to chattels. Eight other cases were also initiated by KINDER in San Diego County Superior Court at about the same time. These cases were all removed to the United States District Court for the Southern District of California. A mere cursory review of the complaints filed in each of the nine cases KINDER has pending before this Court reveals that the claims in each case allege violations of the same statutes and involve similar facts and circumstances. KINDER used the same boilerplate language in each of the nine complaints.

KINDER has filed scores of cases in California State Court based on the very same statutory violations, and based on identical facts and circumstances. A summary review of the approximately fifteen cases filed by KINDER in 2003 alone reveals that KINDER has used virtually the exact same canned language in his complaints for over five years. In 2003, as a result of his blatant pattern of vexatious litigation, the Superior Court precluded KINDER from filing any new litigation based on the Telephone Consumer Protection Act. KINDER's name was added to the List of Vexatious Litigants prepared by the Administrative Office of Courts of California in May of 2003 and has been on the list ever since, including the Vexatious Litigant Lists published in September 2007, October 2007 and January 2008. (Exh. 16.)

The countless lawsuits filed by KINDER in both state and federal court have wasted valuable judicial resources, as well as the resources of the many defendants who are victims of KINDER's calculated pattern of vexatious litigation. Because there is no doubt that KINDER is a vexatious litigant, Harrah's Entertainment, Inc. requests that this Court issue an order requiring that KINDER post a bond in the amount of no less than \$75,000, representing a reasonable amount to secure the costs that will be incurred in defense of this action. (Giusso Decl., ¶ 2.)

1 II.

2 **PERTINENT BACKGROUND**

3 **A. Facts And Procedural Background Related To This Case.**

4 On October 2, 2007, KINDER filed a complaint against Harrah's Entertainment, Inc. in
 5 San Diego County Superior Court. (Giusso Decl., ¶3.) The complaint alleged violations of the
 6 Telephone Consumer Protection Act of 1991, California *Civil Code* section 1770, California's
 7 Unfair Business Practices Act, and trespass to chattels. (Giusso Decl., ¶4.) KINDER claims
 8 Defendant violated the above statutes by calling his (619) 999-9999 telephone number which is
 9 assigned to a paging service, using an artificial or prerecorded voice, without KINDER's express
 10 permission. (Exh. 25, p. 2:21-24, 3:7-11, 3:25-27.) On November 21, 2007, Defendant removed
 11 the action to the Southern District of California based on this Court's diversity jurisdiction
 12 pursuant to 28 U.S.C. §1332(a). (Giusso Decl., ¶5.) On November 30, 2007, Defendant filed a
 13 motion to dismiss the complaint pursuant to Federal Rule of Civil Procedure 12(b)(2) and (6).
 14 (Giusso Decl., ¶6.) On December 28, 2007, KINDER filed a motion for leave to file an amended
 15 complaint seeking to add five new defendants to the action and on January 22, 2008, this Court
 16 granted KINDER's motion for leave to amend and denied the motion to dismiss. (Giusso Decl.,
 17 ¶7.)

18
 19 **B. Plaintiff's Long History Of Vexatious Litigation.**

20 KINDER is a disbarred attorney who was convicted of a felony in the 1980's. KINDER
 21 has an extensive history as a vexatious litigant. (See, Exh. 16.) During the years 2000-2007,
 22 KINDER filed in excess of 350 cases in California state courts alone. (Exhs. 1-2.) On May 21,
 23 2003, KINDER's name was added to the Vexatious Litigant List prepared and maintained by the
 24 Administrative Office of the Courts for the State of California, and he was prohibited from filing
 25 any future claims without obtaining a pre-filing order and being subject to posting a bond. (Exh.
 26 16; Cal. Code Civ. Proc. §391.1.)

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1 Starting in about 1999, KINDER started a barrage of lawsuits related to a pager number
 2 which he specifically obtained – (619) 999-9999. KINDER has admitted proudly that he is
 3 "swamped" with "autodialer" calls to this number because a computer will often default to the
 4 999-9999 number. (Exh. 28.) Reportedly, in a 2000 deposition, KINDER explained the genesis
 5 behind the "999" lawsuits:

6 Asked why he was filing so many lawsuits against companies he claimed were
 7 harassing him telephonically, Kinder replied, "I am going to sue the shit out of
 every one of them because they are screwing with me and they don't care."

8 (Exh. 28.)

9 Despite his status as a vexatious litigant, in September of 2003, KINDER attempted to file
 10 the following twelve actions in San Diego County Superior Court based on alleged violations of
 11 the Telephone Consumer Protection Act of 1991, each of which claimed nearly identical facts and
 12 circumstances as are alleged in the present cases based on KINDER's use of the 999-9999
 13 telephone number:

- 14 • *James M. Kinder v. States Recovery Systems, Inc.*, Case No. GIC 818823;
- 15 • *James M. Kinder v. Household Automotive Finance*, Case No. GIC 818812;
- 16 • *James M. Kinder v. Corporate Collection Services, Inc.*, Case No. GIC 822762;
- 17 • *James M. Kinder v. Rite Aid Corporation*, Case No. GIC 818821;
- 18 • *James M. Kinder v. Mitsubishi Motors Credit.*, Case No. GIC 818822;
- 19 • *James M. Kinder v. NCO Financial Systems, Inc.*, Case No. GIC 818820;
- 20 • *James M. Kinder v. 24 Hour Fitness USA, Inc.*, Case No. GIC 818819;
- 21 • *James M. Kinder v. Bay Area Credit Service, Inc.*, Case No. GIC 818818;
- 22 • *James M. Kinder v. Washington Mutual Bank*, Case No. GIC 818816;
- 23 • *James M. Kinder v. Western Collection Recovery, Inc.*, Case No. 818817;
- 24 • *James M. Kinder v. Collectech Systems, Inc.*, Case No. 818815; and
- 25 • *James M. Kinder v. Triad Financial Corporation*, Case No. GIC 818814.

26 (Exhs. 3-14.)

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1 The complaints in the above-actions are virtually identical to one another, each praying for
 2 an award of \$500 for every violation of the Telephone Consumer Protection Act. (Exhs. 3-14.) In
 3 many of these cases, KINDER alleged only nine (9) or fewer violations of the statute, making his
 4 potential recovery very limited thereby essentially forcing the defendants to settle with him. (See,
 5 e.g., Exhs. 6, p. 3; 9, p. 3; 12, p. 3; 13, p. 3; 14, p. 3.) For example, in *Western Collection*
 6 *Recovery, Inc.*, KINDER alleged that only two unlawful calls were made to his 999-9999
 7 telephone number. (Exh. 12.) However, as a result of KINDER's status as a vexatious litigant,
 8 each of the above cases was dismissed by an Order Denying Permission to File New Litigation.
 9 (Exhs. 6, 9, 12-14.)

10
 11 A review of the docket of the San Diego County Superior Court reveals that KINDER filed
 12 an additional 150 cases during the year 2007. (Exh. 2.) Among the countless cases filed by
 13 KINDER in 2007, at least twenty-seven cases were filed in the month of December 2007 alone;
 14 every one of which was based on alleged violations of the Telephone Consumer Protection Act
 15 related to KINDER's use of the 999-9999 telephone number that he intentionally requested. (*Id.*)

16
 17 C. **KINDER Has At Least Nine Cases Pending Before The Southern District, All**
 18 **Alleging Violations Of The Telephone Consumer Protection Act Based On Nearly**
 19 **Identical Facts And Circumstances.**

20 In addition to the hundreds of cases KINDER has filed in California state court, there are
 21 currently at least nine cases pending before this Court (all of which were removed from state
 22 court) in which KINDER seeks relief under the Telephone Consumer Protection Act of 1991
 ("TCPA") for his use of the 999-9999 telephone number:

- 23 • *James M. Kinder v. Nationwide Recovery Systems, Ltd.*, Case No. 07cv2123
- 24 DMS(AJB);
- 25 • *James M. Kinder v. Enhanced Recovery Corporation*, Case No. 07cv2152
- 26 DMS(AJB);
- 27 • *James M. Kinder v. Bankfirst*, Case No. 07cv877 DMS(POR);
- 28 • *James M. Kinder v. Sprint PCS Assets, LLC*, Case No. 07cv2049 WQH(JMA);

- 1 • *James M. Kinder v. Asset Acceptance, LLC*, 07cv2084 DMS(AJB);
- 2 • *James M. Kinder v. Astra Business Services, Inc.*, Case No. 07cv2091 H(JMA);
- 3 • *James M. Kinder v. Discover Card Services, Inc.*, Case No. 07cv2138
- 4 WHQ(JMA);
- 5 • *James M. Kinder v. Cavalry Investments, LLC*, Case No. 07cv2274
- 6 IEG(WMC); and
- 7 • *James M. Kinder v. Harrah's Entertainment, Inc.*, Case No. 07cv2226
- 8 DMS(POR).

9 (Exhs. 17-25.)

10
 11 At the time KINDER filed these lawsuits, and specifically at the time KINDER filed his
 12 action against Harrah's Entertainment, Inc. KINDER had already been deemed a vexatious litigant
 13 under California law and was subject to an order requiring him to obtain leave of court prior to
 14 filing any claims. (Exh. 16.) This is evidenced by the fact that KINDER's name appears on the
 15 Vexatious Litigant Lists for September 2007, October 2007, and the current list for January 2008,
 16 as published by the Administrative Office of Courts of California. (Exh. 16.) KINDER did not
 17 obtain leave of court, as required by California law, prior to filing any of these lawsuits, including
 18 his complaint against Defendants.

19
 20 Absent minor factual differences, KINDER's complaints in the nine cases before this Court
 21 are virtually identical, all alleging violations of the TCPA based on KINDER's 999-9999
 22 telephone number. (Exhs. 17-25.) In fact, many of the complaints differ only in that a different
 23 defendant is named, and are completely identical in every other respect. (*See*, Exhs. 17, 18, 20,
 24 21, 23, 24.) In fact, the only complaint currently before this Court that alleges any additional
 25 causes of action is the complaint against Defendant Harrah's Entertainment, Inc. which alleges
 26 additional causes of action under California statutory and common law. (Exh. 25.)

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1 **III.**

2 **ARGUMENT**

3 **A. Authority Related To Vexatious Litigants.**

4 The District Court has the inherent power to levy sanctions in response to abusive
5 litigation practices. (*Molski v. Mandarin Touch Restaurant*, 347 F.Supp.2d 860, 863 (C.D.Cal.
6 2004)), citing, *Roadway Express, Inc. v. Piper*, 447 U.S. 752, 765-766 (1980).) This inherent
7 power vested in the federal courts includes the ability to issue orders requiring restrictions of
8 pleadings filed by vexatious litigants. (*DeLong v. Hennessy*, 912 F.2d 1144, 1147 (9th Cir. 1990),
9 citing, *Tripati v. Beaman*, 878 F.2d 351, 352 (10th Cir. 1989) (stating "there is strong precedent
10 establishing the inherent power of federal courts to regulate the activities of abusive litigants by
11 imposing carefully tailored restrictions under appropriate circumstances").)

12
13 The Local Rules of this Court provide, "[a]n attorney in practice before this court shall not:
14 . . . Knowingly participate in litigation or any other proceeding that is without merit or is designed
15 to harass or drain the financial resources of the opposing party." (U.S. Dist. Ct., Local Civ. Rules,
16 Southern Dist. Cal., rule 83.4.2(c).) In addition, the Ninth Circuit has endorsed and adopted a five
17 factor test for determining whether a party is a vexatious litigant. (*Molski v. Evergreen Dynasty*
18 *Corp.*, 500 F.3d 1047, 1051 (9th Cir. 2007) (affirming the District Court's application of a five-
19 factor test).) *Molski* involved a plaintiff who had filed hundreds of lawsuits throughout the course
20 of his career as a litigant. (*Molski v. Mandarin Touch Restaurant*, 347 F.Supp.2d 860, 861
21 (C.D.Cal. 2004).)

22
23 In determining that the plaintiff was a vexatious litigant, the District Court adopted the
24 following five factor tests used by the Second Circuit Court of Appeals:

- 25 (1) the litigant's history of litigation and in particular whether it entailed
26 vexatious, harassing, or duplicative suits;
27 (2) the litigant's motive in pursuing the litigation, for example, whether the
28 litigant had a good faith expectation of prevailing;
(3) whether the litigant is represented by counsel;

(4) whether the litigant has caused unnecessary expense to the parties or placed a needless burden on the courts; and

(5) whether other sanctions would be adequate to protect the courts and other parties.

(*Id.* at 863-864, *citing, Safir v. United States Lines, Inc.*, 792 F.2d 19, 24 (2d Cir. 1986).) The Ninth Circuit in *Molski* subsequently affirmed the District Court's determination that the plaintiff was a vexatious litigant required to obtain leave of court before filing any further claims. (*Molski v. Evergreen Dynasty Corp.*, 500 F.3d at 1051.)

In analyzing the first of the five factors, the district court noted that the plaintiff was a career litigant who had previously filed hundreds of lawsuits, most of which ended in settlement. (*Molski v. Mandarin Touch Restaurant*, 347 F.Supp.2d 860, 861 (C.D.Cal. 2004).) The court stated that while "litigiousness alone is insufficient to justify a restriction on filing activities, it is a factor the Court considers indicative of an intent to harass." (*Id.* at 864, *citing, DeLong v. Hennessey*, 912 F.2d 1144, 1147 (9th Cir. 1990).) In its analysis of the first factor, the court noted that the "textual and factual similarity of the complaints filed by the Plaintiff" was "indicative of an intent to harass, as it suggests that Plaintiff is filing boilerplate complaints." (*Molski*, 347 F.Supp.2d at 864, *citing, In re Powell*, 851 F.2d 427, 431 (D.C.Cir. 1998).)

Most important, however, in the District Court's analysis of the first factor is the fact that, "[a]lthough [the] complaint appears credible standing alone, its validity [was] undermined when viewed alongside [the plaintiff's] other complaints." (*Id.*) The court emphatically stated: "for purposes of imposing sanctions under the inherent power of the court, a finding of bad faith does not require that the legal and factual basis for the action prove totally frivolous; where a litigant is substantially motivated by vindictiveness, obduracy, or mala fides, the assertion of a colorable claim will not bar the assessment of sanctions." (*Id.* at 865 (emphasis added)], *citing, Fink v. Gomez*, 239 F.3d 989, 992 (9th Cir. 2001).)

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1 Analyzing the second factor—the litigant's motive in bringing the lawsuit—the district
 2 court stated that while "raising multiple claims, by itself is not unethical or vexatious. . . . it is
 3 consistent with an overall pattern of behavior that demonstrates [the plaintiff's] motivation is,
 4 ultimately, to extract a cash settlement." (*Id.* at 866.) The court further noted that the plaintiff's
 5 pattern of filing multiple claims based on identical facts and circumstances "suggests that he does
 6 not even have a reasonable expectation (or intention) of litigating the suit on the merits." (*Id.*)

7
 8 With respect to the third factor, whether the litigant is represented by counsel, the district
 9 court stated that "[a]lthough courts are generally protective of *pro se* litigants, this same protection
 10 does not apply to litigants represented by counsel, and thus this factor also weighs against
 11 Plaintiff." (*Id.*) Moreover, the court, without need for any discussion, easily found the fourth
 12 factor, the burden on the courts, to weigh heavily against the plaintiff because he "had filed a
 13 countless number of vexatious claims." (*Id.*)

14
 15 Finally, the District Court found the fifth and final factor—the adequacy of other
 16 sanctions—weighed heavily in favor of issuing a pre-filing review order against the plaintiff. The
 17 district court stated:

18 As noted, Plaintiff's filings appear meritorious when examined individually.
 19 Their vexatious nature is revealed only when viewed in the aggregate.
 20 Thus, the only effective way to put a reviewing judge on notice of Plaintiff's
 21 history is to require [the plaintiff] to file a copy of this order with every new
 22 complaint that he seeks to file. This would allow the reviewing judge to
 assess whether [the plaintiff] had raised a bona fide claim . . . or whether he
 was merely bringing another vexatious claim in order to strong arm a
 business into settling.

23 (*Id.* at 866-867, citing, *In re Billy Roy Tyler*, 839 F.2d 1290, 1293-1294 (8th Cir. 1988).)

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1 The district court's analysis in *Molski* has been followed recently by numerous decisions in
 2 the Southern District. For example, in *Wilson v. Kayo Oil Co.*, the Southern District cited *Molski*
 3 and ordered the vexatious plaintiff "to show cause why the Court should not 'exercise its inherent
 4 power' to declare [the plaintiff] a vexatious litigant, impose a pre-filing order on his attorneys, or
 5 award monetary sanctions to [the defendants]." (*Wilson v. Kayo Oil Co.*, 2007 WL 3203035
 6 (S.D.Cal. 2007), *citing*, *Molski*, 347 F.Supp.2d at 867.)

7
 8 **B. Kinder Clearly Meets All The Requirements To Be Deemed A Vexatious Litigant In**
 9 **This Court.**

10 As the District Court found in *Molski*, KINDER's filing of "boilerplate complaints"
 11 indicates an intent to harass Defendant. (*Molski*, 860 F.Supp.2d at 865.) As stated above, and as
 12 evidenced by the numerous exhibits accompanying this motion, KINDER's complaints could
 13 hardly be more "textually and factually similar." In fact, the only difference between many of the
 14 complaint is the name of the defendant. (Exhs. 17, 18, 20, 21, 23, 24.) Thus, KINDER's bad faith
 15 intent to harass Defendant cannot be overcome by any argument by KINDER that his individual
 16 claims have merit.

17
 18 The District Court's reasoning in *Molski* as to the second factor—the litigant's motive in
 19 bringing the lawsuit—can also be applied to the instant case. As did the plaintiff in *Molski*,
 20 KINDER has demonstrated an extensive and calculated pattern of filing multiple claims alleging
 21 the same statutory violations and based on identical facts and circumstances. Accordingly, this
 22 Court may infer that KINDER does not even have a reasonable expectation or intention of
 23 litigating this suit on the merits.

24
 25 The fact that KINDER is purportedly represented by Attorney Chad Austin, in this matter
 26 does not protect KINDER from this Court issuing a pre-filing review order as to all future claims
 27 he may file. In fact, as the District Court in *Molski* clearly stated, courts are not generally
 28 protective of litigants represented by counsel. (*Id.* at 865.) Further, as this Court noted in a recent

1 order in this case: "once a person is declared a vexatious litigant, filing subsequent lawsuits
 2 through counsel does not exempt him from the requirements of [a] pre-filing order." (Exh. 26, p.
 3 2, fn. 2.) Moreover, KINDER himself is a former attorney who should know well the
 4 consequences of such egregious abuse of the judicial system. (Exh. 27.)

5
 6 Regarding the fourth factor in the District Court's analysis in *Molski*, it is clear that
 7 KINDER's pattern of vexatious litigation has long been a burden on both state and federal courts
 8 in California. As noted above, KINDER currently has at least 150 cases pending in state and
 9 federal court in San Diego constituting a massive waste of valuable judicial resources. Such
 10 conduct should not be countenanced by this Court.

11
 12 Finally, the only effective way to deter KINDER from continuing in his present course of
 13 conduct, and wasting the valuable resources of the Court and the resources of the defendants who
 14 become the victims of vexatious lawsuits, is for this Court to issue an order deeming him a
 15 vexatious litigant and requiring him to post a bond should he decide to continue to prosecute the
 16 instant action.

17
 18 C. **This Court Should Issue An Order That KINDER Be Required To Post A Bond Of**
 19 **No Less Than \$75,000.**

20 It is undisputed that KINDER was already deemed a vexatious litigant in 2003 by the San
 21 Diego County Superior Court, and that his name remained on the vexatious litigants' list of the
 22 Administrative Office of the Courts at the time he filed the instant action. (Exh. 16.)
 23 Notwithstanding these facts, there is ample reason for this Court to deem KINDER a vexatious
 24 litigant on its own. (See, *Molski v. Evergreen Dynasty Corp.*, 500 F.3d at 1051; *Wilson v. Kayo*
 25 *Oil Co.*, 2007 WL 3203035 (S.D.Cal. 2007).) It is equally undisputed that KINDER failed to
 26 obtain a pre-filing order prior to filing the instant action on October 2, 2007. (Giusso Decl., ¶ 8.)
 27 Thus, the original Complaint filed in this action, before it was removed to this District Court, was
 28 *per se* frivolous.

1 This Court may impose sanctions under state law for frivolous pleadings filed in state court
 2 before removal – *i.e.*, the Original Complaint in this action. (*See, Tompkins v. Cyr*, 202 F.3d 770,
 3 787 (5th Cir. 2000); *see also, Griffen v. City of Oklahoma City*, 3 F.3d 336, 341 (10th Cir. 1993).)
 4 California Code of Civil Procedure §391, provides in pertinent part:

5 In any litigation pending in any court of this state, at any time until final judgment
 6 is entered, a defendant may move the court, upon notice and hearing, for an order
 requiring the plaintiff to furnish security.

7 (Cal. Code Civ. Proc. §391.1.) The Local Rules of this district provide that the Court may require
 8 a party "to furnish security for costs which may be awarded against such party in an amount and
 9 on such terms as are appropriate." (Local Civ. Rules, Southern Dist. Cal., rule 65.1.2(a).)

10
 11 KINDER is one of the most litigious people in San Diego. He is infamous in San Diego
 12 courts, both federal and state. He has made an industry out of the "999" litigation, based on a
 13 telephone number that he chose himself, hoping to be able to use it to "sue the shit" out of
 14 companies whom he alleges have telephoned his number. (Exh. 28.) On numerous occasions,
 15 these *pro forma* "999" lawsuits have been dismissed uniformly because Courts found KINDER's
 16 unverified allegations to be insufficient to conclude that his claims had "sufficient potential merit
 17 to allow plaintiff to proceed and is not simply filed to harass the defendant." (Exhs. 6, 9, 12-14.)

18
 19 This Court may order a "state court" sanction in the form of a bond/security as required for
 20 vexatious litigants under Cal. Code of Civil Procedure §391.1. Alternatively, under this Court's
 21 inherent sanction authority, and the authority under the Local Rules, the Court may require the
 22 posting of such a bond. KINDER is truly the archetypical vexatious litigant. He is the exact type

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1 of litigant that California's vexatious litigant statute, and federal law concerning vexatious
 2 litigants, is supposed to address. In this case, given these facts, it is necessary for this Court to
 3 issue an Order requiring KINDER to post a bond/security in the amount of \$75,000 if he chooses
 4 to continue to prosecute the instant action.¹

5
 6 IV.

7 CONCLUSION

8 In order to deter KINDER from continuing to engage in this obvious pattern of harassing
 9 and vexatious litigation conduct, Harrah's Entertainment, Inc. respectfully requests this Court issue
 10 an order requiring KINDER to post a bond in an amount of no less than \$75,000, to secure the
 11 costs which will be reasonably incurred by Defendant (and as yet-un-served Defendants) in the
 12 defense of this action.

13
 14 SHEA STOKES ROBERTS & WAGNER, ALC

15
 16 Dated: March 6, 2008

By: s/Maria C. Roberts

Maria C. Roberts

Ronald R. Giusso

Attorneys for Defendant

HARRAH'S ENTERTAINMENT, INC.

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 26 ¹ As set forth in the accompanying Declaration of Ronald R. Giusso, \$75,000 is a reasonable amount to require
 27 KINDER to post as security for the continued prosecution of this action as Defendant Harrah's Entertainment, Inc.,
 28 and additional as yet-un-served *Specially Appearing* Defendants, expect to incur at least that amount in costs related to
 investigation, research and defense of KINDER's claims, forensic analysis of the alleged telephone calls and
 transcripts, and other necessary means to defend against KINDER's claims. (Giusso Decl., ¶ 2.)